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09/846,673	05/01/2001	Michael R. Dupelle	04644-088001	4557

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EXAMINER

BRADFORD, RODERICK D

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/846,673

Applicant(s)

DUPELLE ET AL.

Examiner

Roderick Bradford

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 and 36-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3762

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1-14 and 36-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1 and 35 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

Joo places the electrodes with the sensor on the chest which is "at a location near a blood vessel that expands as a result of blood pulsing through the vessel" since the electrodes and sensors are near the heart and associated blood vessels. In addition since Joo's device is a piezoelectric transducer which will detect mechanical motion from the expansion of the blood vessel.

In addition it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961). The pulse sensor "being configured to detect mechanical motion resulting from expansion of the blood vessel" does not affect the method in a manipulative sense.

### ***Claim Rejections - 35 USC § 102/103***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3762

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 3762

6. Claims 15-19, 21-24, 29, 32, 34 and 35 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Joo et al. U.S. Patent. No. 6,440,082.

Referring to claims 15 and 35, Joo discloses a method for treating possible cardiac arrest comprising:

- applying a piezoelectric pulse sensor to the patient (Fig. 2 and column 4, lines 60, 61)
- applying electrodes of a defibrillator to the patient (Fig. 2)
- using the pulse sensor to detect whether the patient has a pulse (Fig. 4 and column 6, lines 45-52).

<sup>that</sup>  
In the alternative Joo discloses ~~the~~ other types of pulse sensors can be used (column 14, lines 45-60).

Joo discloses the claimed invention except for wherein the piezoelectric pulse sensor being configured to detect mechanical motion resulting from the expansion of the blood vessel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the teachings of Joo to include a piezoelectric pulse sensor being configured to detect mechanical motion resulting from the expansion of the blood vessel since it was well known in the art to use piezoelectric sensor being configured to detect mechanical motion resulting from the expansion of the blood vessel as a more efficient means of ensuring that the patient has a pulse.

Referring to claim 16, further comprising monitoring the pulse if present (column 13, lines 53-65).

Art Unit: 3762

Referring to claim 17, wherein the defibrillator has an ECG function and the method further comprises using the ECG of the defibrillator to monitor the patient's heart rhythm (column 5, lines 51-53).

Referring to claim 18, further comprising analyzing the pulse and heart rhythm to determine the appropriate treatment for the patient (Fig. 11).

Referring to claim 19, wherein the analyzing step includes determining whether the patient's pulse, if present, is correlated with the R-wave of the patient's heart rhythm (column 3, lines 1-7 and column 8, lines 31-36).

Referring to claims 21 and 22, wherein the analyzing step includes determining whether the ECG rhythm is treatable with defibrillation and delivering a shock to the patient using the defibrillator (column 12, lines 22-27 and column 13, lines 3-5).

Referring to claim 23, further comprising delivering a predetermined number of shocks to the patient, and then subsequently determining whether the patient's pulse, is correlated with the R-wave (column 13, lines 18-21).

Referring to claim 24, further comprising, if the subsequent determination is negative, administering CPR (column 13, lines 21-25).

Referring to claim 29, wherein the pulse sensor is mounted on one of the electrodes of the defibrillator (column 4, lines 53-55).

Referring to claim 34, wherein the pulse sensor is attached to pulse point other than the patient's neck (Fig. 2).

Art Unit: 3762

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 20, 25, 26, 27, 28, 30, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joo et al. U.S. Patent No. 6,440,082.

Referring to claims 20 and 25, Joo discloses the claimed invention except for wherein the determination is positive, no ECG analysis is performed and further comprising using a pulse sensor to determine the efficacy of the CPR treatment.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device as taught by Joo, with if the determination is positive that no ECG analysis is performed and comprising a pulse sensor to determine the efficacy of the CPR treatment since it was well known in the art that if the

Art Unit: 3762

determination is positive then no ECG analysis will be performed as a means not to waste battery life performing unnecessary ECGs and having pulse sensors to determine the efficacy of treatment as a means to determine if the patient will need further care.

Referring to claims 26 and 31, Joo discloses the claimed invention except for wherein the pulse sensor comprises a piezoelectric polymer film and is self-shielded.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device as taught by Joo, with wherein the pulse sensor that comprises a piezoelectric polymer film and are self-shielded since it was well known in the art to use a piezoelectric polymer film and self-shielding pulse sensors as a means to reduce interference.

Referring to claims 27, 28, 30 and 33, Joo discloses the claimed invention except for wherein the pulse sensor is mounted on an elastic strap and further attaching the elastic strap around the patient's neck and wherein the pulse sensor further comprises a foam layer.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device as taught by Joo, with a pulse sensor mounted on an elastic strap and further attaching the elastic strap around the patient's neck and where the pulse sensor further comprises a foam layer since it was well known in the art to include a pulse sensor mounted on an elastic strap and further comprising attaching the elastic strap around the patient's neck and where the pulse sensor further comprises a foam layer as an alternate means for monitor the pulse of a patient and to



Art Unit: 3762

provide the elastic strap so the sensor can comfortably fit and be used on different patients.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wood et al. U.S. Patent No. 6,487,442.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roderick Bradford whose telephone number is (703) 305-3287. The examiner can normally be reached on Monday - Friday 7 a.m. - 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone numbers

Art Unit: 3762

for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

*R. B. Evanisko*

R.B.  
August 22, 2003

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GEORGE R. EVANISKO  
PRIMARY EXAMINER

*8/22/03*